

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

JUN 09 2008

at 4 o'clock and 30 min. P.M. 8
SUE BEITIA, CLERK

Arieta Yamaguchi-Detainee
89145-022
C/O Dublin FCI- Custodian
5675 8th Street Camp Parks
Dublin, California, 94568

In Propria Persona

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA)	CASE NO. <u>CR 02-00552-TSZ</u>
)	(To be supplied by Clerk)
)	
)	
)	MOTION TO VACATE JUDGMENT;
vs.)	SENTENCE AND CONVICTION; FOR
)	VIOLATION OF MOVANT'S RIGHTS/
)	FOR LACK OF COURT'S PERSONAL
Arieta Yamaguchi)	AND SUBJECT MATTER JURISDICTION;
)	UNDER 28 U.S.C. §2255 PER MODEL
)	FORM FOR MOTION/ <u>JUDICIAL NOTICE</u>
Movant)	

MOTION

1. Name and location of court which entered the judgment of conviction under attack- The above-entitled court("COURT"), located at Ala Moana Boulevard, Honolulu, Hawaii 96850;
2. Date of judgment of conviction- May 23, 2005- filed June 20, 2005, which filing Order I did not received, until July 10, 2005;
3. Length of sentence- Fifteen (15) Years;
4. Nature of offense (all counts)- UNDER COLOR OF LAW 21 U.S.C. §846; §841... CONSPIRACY TO DISTRIBUTE AND POSSESS WITH INTENT TO DISTRIBUTE 1.5 KILOGRAMS (equivalent to 1,500 grams), OR MORE OF COCAINE BASE, and seven count stemming from a second superseding indictment that did not charge Me In Fact for Distributing Cocaine.
5. What was your plea?- " The above-entitled court entered a not guilty plea for Me without My consent;
6. If you pleaded not guilty, what kind of trial did you have?- JURY;
7. Did you testify at the trial?- NO;
8. Did you appeal from the judgment of conviction?- YES;
9. IF you did appeal, answer the following questions:
 - (a) Name of Court: The above-entitled court and the Ninth court of Appeals;
 - (b) Result: The court refused to hear My May 26, 2005 Motion to Arrest Judgment/Sentencing while the Ninth appears to be awaiting settlement of this motion;
 - (c) Date of result- N/A;
10. Other than a direct appeal from the judgment of conviction and sentence, have you previously file any petitions, applications or motion, with respect to this judgment to any Federal Court?- YES;
11. If your answer to 10 was "yes", give the following information:
 - (a)(1) Name of court- The above entitled court;
 - (2) Nature of proceeding- Motion to Arrest Judgment/Sentencing and Habeas Corpus;
 - (3) Grounds Raised- The UNITED STATES ("U.S.") lacks material evidence required to grant its subject matter/in personam jurisdiction over Me,

and that the US agents illegally broke into My non-commercial home together with local police officers, and arrested Me without a warrant in order to initiate its wrongful suit. U.S. has refused to provide discovery of its Claim to grant its relief i.e., provide the charging document, and the warrant of commitment/detainer in support of its authority to restrain Me of My lawful liberty.

I am Me, I am not a citizen of the United States or any State of the United States, I hold no commission, nor fill any office under these governments or their communities, as I did not violate any act of Congress resulting in an offense, nor could I violate an unassigned commission. The U.S has produced no evidence to warrant its September 7, 2004 Reassignment of the case to judge Thomas S. Zilly of Washington District, and then on June 17, 2005, Reassign it back to the first assigned Judge David Allen Ezra, nor was there any substantial evidence from a lower agency's decision for Court to render judgment, nor was there any complaint filed by an injured private individual. There is no agreement for Court to consider nor were there any issues of substantial evidence to enjoin Me as party to suit, e.g., The U.S **did** not possess the charging document to maintain its suit against Me;

(4) Did you receive any evidentiary hearing on your petition, application or Motion? - NO;

(5) Result: DENIED with PREJUDICE;

(6) Date of Result- October 12, 2005;

(b) As to any second petition, application or motion give the same information:

(1) Name of Court- The above-entitled Court;

(2) Nature of proceedings- Alias Writ of Habeas Corpus;

(3) Grounds raised- Same as 11(a) (3) supra;

(4) Did you receive any evidentiary hearing on your petition, application or motion? - NO;

(5) Result- No Decision from Court;

(6) Date of Result- N/A;

(c) Did you appeal to an appellate Federal Court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc.- YES;

(2) Second petition, etc.- YES;

(d) If you did not appeal from the adverse action on any petition, application or motion, explain why you did not- N/A;

(12) State concisely every ground on which you claim that you are being held in violation of the Constitution, laws or treaties of the UNITED STATES.

Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred presenting additional grounds later.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be return to you if you merely check(a)through(j) or any one of the grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by use of coerced confession.

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

GROUND FOR MOTION: (1) JURISDICTION; (2-6) from the above listed grounds and "ADDITIONAL GROUNDS"

A. GROUND ONE: The U.S lacks any material or substantial evidence that would prove proper subject matter/in personam jurisdiction exists over Me.

SUPPORTING FACTS:

I AM NOT a citizen of the UNITED STATES, or any STATE of the UNITED STATES. I HOLD no commission, nor could I violate a commission not granted, nor fill any office under those Governments, as I cannot possibly violate any act of Congress that would result in an offense, government has not provided its Claim in the first instance upon which its relief could be granted, nor is there any substantial evidence of a lower agency's decision for the Court to acquire jurisdiction and issue judgment; nor is there any injured individual for court to consider, nor are there any issues of substantial evidence to enjoin Me as party to suit, e.g., the U.S does not possess the charging document to maintain its suit against Me.

B. GROUND TWO: Conviction obtained by Use of Evidence gained pursuant to an Un-Constitutional Search and Seizure.

SUPPORTING FACTS:

On the night of December 17,2002, Hawaii State Police Department male officers entered My non-commercial home by force, together with two other civilian clothed men whom did not identify themselves while in My home, that till today, I still don't know who they were, because the mens I saw at My home were not the same mens who appears on the witness stand at trial.

I am a rented occupant of a two story home upstairs, while a single mother live downstairs. On that night, I was awaken by My neighbor downstairs' loud scream, that got Me running from My bedroom with only My underwear on, and since I was home alone, I didn't think it important to put on any clothes except My only concern was to get to the window of My living room and to look down to My neighbor's door to see if I could be of help to her, when I looked down from where I could see her door, I was surprise to see police officers coming out from her door, so I thought that was kind of fast for police officers to get there quickly, so I ran to the other side of the living room where the windows are by the steps to come upstairs with My curiosity of finding out who the police got out from My neighbor's downstairs, to looked down, I saw an officers with a masked coming upstairs, so I went to put on clothes to see what the officer wants concerning My neighbor, while sitting on My bed in My room looking into boxes next to My bed to find something to put on because I packed most of My things because I was evicted of more than three months behind on My rent, anyway, as I was siting on My bed with only My underwear on looking for something to put on, all of a sudden, one of the doors of My bedroom flew open and police officers rushing inside My room yelling fo Me to get down with shot guns pointing at Me. I was so shocked of what is taking place in My room that was unabling to comply with the police Orders because I kept sitting on My bed with only My under-wear, until two officers grab Me and threw Me on the floor and pried My hands back-

wards I came aware because of the pain when they force My hands backward; While on the floor handcuffed, I felt so humiliated by being cuffed with only My underwear on, I asked why are they arresting Me could anyone of them explain to Me what is going on, and why I am being arrested without an arrest warrant, nobody gave Me an answer to all My questions pertaining to any Arrest Warrant if they do have, I want to see it, instead one of them lifted Me up from the floor where I laid, by grabbing the cuffs and yank Me up, the pain I felt from that was so severe that till today it persist. When I was on My feet, I was told to walk out of My room, I felt more humiliated that I'm ordered to walk in front of them with only My underwear on, I came to My living room, in there I saw the two civilian clothed mens standing talking, so I asked them who they were, instead of identifying who they were, they ask Me what I want, so I asked if they could tell Me why I am being arrested, and where is the Warrant for My arrest?, to My surprise these two gentlemen ignored Me and not answer My question, while I'm talking with these mens, I saw policemen coming out from the other two room of My home with dark big trash bags with things in them and go out into My front door without telling Me what they are taking out of My home, I yell at them and said, why is My home being search, what is really going on here, why are they taking stuffs out of My home, that what they are doing are like stealing My personal belongings, all of what I said and asked for was never given an answer to, until they were thru with whatever they wanted to do regardless their obligation as law officers, and all the while I was left sitting in My living room with only My underwear on while they invade My home and take what they wanted without My consent or at least show to Me what they took out from My home.

When they done doing what they came to do to Me and My home without any warrants of Search or Seizure or any Arrest warrant, one of the civilian clothed men said to Me I will be going down with them, I said I am not leaving My home until I am given the warrant of My arrest and the warrant to search My home, the two civilian clothed men join together and said to Me I am only going down for questioning, it is only an investigation, and if I am not involved then there will be no warrant for Me, that the warrants is provided only if I'm involved, so I told them why I was being inhumanly treated the way I was treated if it is only for questioning, why would I be in handcuffs if that is the case that I'm only needed for questioning, and that their story sounds very unqualified for them to be lawofficers if they are.

I was asked to come back to My room to put on a dress they found for Me, I walk back to My room and was release from the cuffs only to put on the dress I was told to put on when that was done with, they said for Me to walk out to where I was sitting and have a sit, as I came out the two civilian clothed mens were standing by My front doorway leading to the stairs to go down, they got My attention towards them by telling Me they will meet Me downstairs, at that time as they were talking to Me, they had in fron of one of them a sheet of paper that was too shinning to far away from Me to be able to read what it says , they just had that shinning laminated looking sheet of of paper in front of them within seconds then they left My home and went downstairs while My home is still full of male officers because there was no female officer, so what was done to Me in the privacy of My own home, I was being arrested without an arrest warrant, and My home was being search and things from My home were being seized without any warrant of search and seizure served to Me or shown to Me that even a list of what was confiscated was never given to Me at the time of My arrest.

GROUND THREE: Conviction obtained by use of evidence obtained pursuant to an Un-lawful Arrest.

SUPPORTING FACTS:

Same supporting facts relating to the supporting facts of ground two; including, the Discovery materials handed to Me in court in Magistrate Chang's Courtroom by court-appointed RICHARD PAFUNDI November of 2003. In the discovery materials there is a list of what the discovery materials consist that I came to find out that there was no arrest warrant listing in that list. But in the trial when I asked for copy, trial JUDGE THOMAS.S.ZILLY, asked the prosecutor Assistant U.S. Attorney

LORETTA SHEEHAN, if the copy of the Arrest Warrant can be provided as I requested, at first she said the government don't have a copy, then changes her mind and told the judge that there will be a copy provided after we take break. The copy of the Arrest Warrant was never provided as said until the day after and it was signed by judge KOBAYASHI. That was the first time I ever saw a copy of the Arrest Warrant when it was provided in trial, and it look like a form you get from the Computer because I was shown copies of Arrest Warrant of other inmates nothing compares to the look of what I was given. The copy of the lawful arrest warrant does not exist or being served to Me at the time of My Arrest.

GROUND FOUR: Conviction obtained by used of Coerced Confession.

SUPPORTING FACTS:

I was forced to leave My home after being arrested without any arrest warrant and the search of My home without any search warrant including things that was seized from My home without a warrant. Since the two civilian clothed mens gave their orders to bring Me down where they parked their cars, the two police officers drag Me out of My own home and tell me to go down, I was afraid they might pushed Me down the stairs that I walk down while the two police officers were behind Me to make sure I go down where the two civilian clothed mens were waiting.

When I was riding with the assurance of the civilian clothed mens, that I am only wanted for questioning, it was too dark to make out where they were taking Me. In the parking lot in the building, I was lead out and taken into a room, and later join by a man different from those who were at My home earlier.

This man came in with a tablet and sat down and said, he was going to ask Me some questions and for Me to comply, and if the answers I give is satisfied by the Judge then he will asked the judge to let Me go, for Me to know anything I say to him will never be used against Me at any time, so I told him I was arrested without a warrant could he find out from the judge why I'm being arrested for questioning, he said for Me not to worry about that, sometime the boys overdo what they are suppose to do, This man I later found out, his name was DUANE STICKLES, the one who filed the COMPLAINT, and also the one whose name is in the discovery materials as the case agent, who request the Search and Seizure Warrant, and also who wire tapp the on going investigation without any authorization, and along with local police officers that were involved in wire tapping, after answering all the questions asked by STICKLES he told Me that he will give the answers I gave him to the judge, for the judge to see if they are sufficient for the government's case against the owner of the L&D BAR, for the reason why I'm being question.

The whole time I was being quetion about all kinds of things by agent STICKLES, I was never given an oppurtunity to have an attorney or given any Miranda Rights. About an hour or so later, Stickles came back, but this time, he was with INS AGENT PULETASI, soon they sat acroos Me, Puletasi said to Me if I valued My family's Safety I better give agent Stickles the answer he wanted, or else My whole family will go down. I was so worried and afraid that I tell Stickles and Puletasi anything I can think about, including what I heard other people said even making up My own stories, to My mind as long as they leave My family alone which I later find out I was being betrayed and lied to, that I was really arrested, but for what reason, I didn't know at that moment. All the time Stickles and Puletasi asked Me questions, they never read Me My Rights or asked if I needed an Attorney.

Afterwards when the questions was done when they said that is all, I was relief with the belief that I was going back home like I was told, Stickles and Puletasi lead Me out into an elevator that stop in a floor where both of them got out, and somebody else got in who took Me downstairs to the bottom floor and led to another elevator when I was led by that man whom I later found out was a Marshall into a room, I saw My sister already there and she told Me that one of her son who is My co-Defendant is on the other side, I became very furious with all Officers who misled and lied to Me. Me and My sister and My Nephew, were forced to appear in front of Magistrate Chang without a Court Summons, where all the court appointed attorneys

crowded the courtroom whom violated us by entering our plea without our consent. Anyway, I was never given any Miranda Rights Procedures, or given an Attorney at the time of the Interrogation with AGENT STICKLES OR INS AGENT PULETASI.

GROUND FIVE: Conviction obtained by the Un-Constitutional Failure of the Prosecution, to Disclose to the defendant, evidence favorable to the defendant.

SUPPORTING FACTS:

The U.S failed to provide discovery, to place into evidence the Original Charging Document,, Letters of Delegations from the Attorney General's Office for the appointment of Assistant U.S Attorney LORETTA SHEEHAN to PROSECUTE on behalf of the UNITED STATES OF AMERICA CR. NO. 00552 against Me and My co-defendant, and agent STICKLES to file the COMPLAINT on behalf of the UNITED STATES OF AMERICA, The Judge Certificate to be included into, All Authorizations from the ATTORNEY GENERAL'S OFFICE for SEarch and SEizure Warrant, Arrest Warrant, Wire Tapping Orders, were never made available which the prosecution UN-CONSTITUTIONALLY FAILED TO DISCLOSE these facts in My Favor.

GROUND SIX: Conviction obtained by action of a grand or petit jury which was un-constituionally selected and impaneled.

SUPPORTING FACTS:

The grand jury and convicting jury were made up of unqualified, misinformed bystanders, that were not selected or impaneled, within meaning of the U.S DISTRICT. The grand Jury's Transcript was not provided in the discovery or My letter of request to Court Clerk Chinn while he was in Office.

GROUND SEVEN: There is No Injured Party.

SUPPORTING FACTS:

The Lex Loci ("Claim"), is non existent, in the normal couse of things renders suit void, as there is no subject matter/in personam evidence to prove a party was injured.

GROUND EIGHT: At December 20,2002, arraignment, the U.S devoid of Claim entered a not guilty plea for Me without My consent, verbally and unconstitutionally remanded Me into custody of the U.S Marshall for an indefinite terms of months, in want of a Warrant of Commitment/Detainer or Claim.

SUPPORTING FACTS:

Arraignment is of Record, but Warrant of Commitment/Detainer is not.

GROUND NINE: The U.S Un-Constitutionally Refused to Settle My February 1, 2005 Alias Writ Of Habeas Corpus, filing No. CV05-00071 DAE/LEK.

SUPPORTING FACTS:

The Record is Deficient of any Response and Settlement.

GROUND TEN: Absent its Claim,i.e., the Charging Document, the U.S Un-Constitutionally denied My Habeas Corpus with Prejudice.

SUPPORTING FACTS:

Are contained in the Order filed on October 12,2004,in case No. CV04-536Z.

GROUND ELEVEN: Denial of effective assistance of counsel.

SUPPORTING FACTS:

All Court Appointed Attorneys shared one thing in Representation, and that is for Me to signed an Enjoinment of My private individual with the fictitious defendant by means of Plea Agreement, regardless of their inability to their proffesion and their refusal to represent Me as I explain My unlawful situation of My arrest and the search of My home without any warrants, that was why I fired them all and insist the Court of granting My Self-Representation which was finally granted in November of 2003, when since I opted to go to trial without any knowledge of the law, but entirely depended on the Lord's help and grace to grant Me His Wisdom to represent myself, in pursuit of His Truth and Justice. Via My detention, I am barred from seeking competent counsel of My choice.

GROUND TWELVE: The U.S. failed to provide timely settlement of its Claim, resulting in violation of its time span allowed under the SPEEDY TRIAL ACT; U.S. failed to provide its warrant of commitment/detainer to support its authority, to restrain Me of My lawful liberty, yet transfer Me from Honolulu to California where I was first booked for the Un-verified Claim.

SUPPORTING FACTS:

The U.S. detained Me of My lawful liberty for 690 days without settlement of its Claim, or surface of any additional charges to the Claim, except detained Me upon the same unchange charges from the Indictment, to the first superseding and second superseding indictment, and wrecklessly ignored in violation an Act of Congress, THE SPEEDY TRIAL ACT. I have under certified mail, et.al., demanded from Warden of Honolulu Federal Detention Center, to present Me with copy of its Warrant of Commitment and Order to transfer Me from Honolulu to California, which he had refused to provide and address the issue.

13. If any of the grounds listed in 12A through K were not previously presented state briefly the grounds were not presented, and give your reasons for not presenting them.

"GROUNDS WERE TIMELY PRESENTED CONSIDERING MY UNWARRANTED SITUATION."

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes, as I am denied any other direct choice to vent My frustration over U.S's unconstitutional action.

15. Give name and addressess if known, of each attorney who represented you in the following stages of the judgment attacked herein:

FOR CAUSE, I FIRED ALL COURT APPOINTED ATTORNEYS AND REPRESENTED MYSELF THROUGHOUT ALL PROCEEDINGS.

16. Were you sentence on more than one count of an indictment, or on more than one indictment in the same court and at approximately the same time? YES

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack? NO

Wherefore, I motion Court to find all relief to which I am entitled in this proceeding. " I Declare by the laws of the UNITED STATES, 28 U.S.C. §1746 (2), under Penalty of Perjury that the foregoing is true and correct to the Best of My knowledge and belief.

Executed on this 5th day of June 2008, at Dublin, California.

By: Ameli Yamaguchi
Movant